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 10 **UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF NEVADA**

11 In re: 12 EB HOLDINGS II, INC., 13 Debtor.	Case No.: BK-19-16364-MKN Chapter 11
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 15 **The above-captioned Debtor intends to request that the Bankruptcy Court schedule a**
 16 **hearing to approve the Disclosure Statement and confirm the associated Plan not later**
 17 **than October 21, 2019, and to establish October 7, 2019 as the date by which objections, if**
 18 **any, to the Disclosure Statement and confirmation of the Plan must be filed with the**
 19 **Bankruptcy Court and served on the Debtor. See Articles VI and XIII of the Disclosure**
 20 **Statement for additional information regarding the anticipated timetable for the Chapter**
 21 **11 Case and the process and timing to file objections.**

22 **As further described herein, please be advised that Article VII of the Plan contains certain**
 23 **release, exculpation, and injunction provisions, including those set forth below. You are**
 24 **advised and encouraged to carefully review and consider the Plan, including the release,**
 25 **exculpation, and injunction provisions set forth in Article VII of the Plan, as your rights**
 26 **might be affected.**

27 **NOTICE OF (I) COMBINED HEARING TO CONSIDER**
 28 **(A) ADEQUACY OF DISCLOSURE STATEMENT AND (B) CONFIRMATION OF**
PRE-PACKAGED PLAN; (II) OBJECTION DEADLINES; AND (C) ANTICIPATED
COMMENCEMENT OF CHAPTER 11 CASE

NOTICE IS HEREBY GIVEN as follows:

1. On August 27, 2019, EB Holdings II, LLC (“Debtor”) commenced a solicitation whereby it is soliciting acceptances from Holders of: (i) PIK Note Claims; (ii) General Unsecured

1 Claims; (iii) EBT Minority Shareholder Claims; and (iv) Existing EB Holdings Interest, of the
2 *Pre-Packaged Chapter 11 Plan of Reorganization of EB Holdings II, Inc. and Its Affiliate Co-*
3 *Plan Proponent, EBT Newco, LLC* (the “Plan”),¹ attached as Exhibit 1 to the *Disclosure*
4 *Statement for Pre-Packaged Chapter 11 Plan of Reorganization of EB Holdings II, Inc. and*
5 *Its Affiliate Co-Plan Proponent, EBT Newco, LLC* (the “Disclosure Statement”).

6 2. EBH anticipates filing a voluntary petition for relief under chapter 11 of title 11
7 of the United States Code (the “Chapter 11 Case”) in the United States Bankruptcy Court for
8 the District of Nevada (the “Bankruptcy Court”) **on or about September 30, 2019** (the
9 “Petition Date”) in order to obtain confirmation of and consummate the Plan. EBH anticipates
10 that a hearing to consider certain “first day” relief will be held before the Bankruptcy Court
11 **on or about October 10, 2019, at 1:30 p.m. (PDT)** (the “First Day Hearing”).

12 3. The Plan was developed in accordance with the terms of the Transaction
13 Agreement, Contribution Agreement, and EBH Minority Contribution Agreement, attached as
14 Exhibits 4, 5, and 6 to the Disclosure Statement. These agreements obligate the Consenting
15 PIK Holders, who hold approximately 95% of the outstanding PIK Loan Claims, and the
16 Minority Shareholders to vote to approve the Plan.

17 4. If the Plan is confirmed by the Bankruptcy Court, among other things: (i) each
18 Holder of an Allowed PIK Loan Claim shall receive, in full and final satisfaction, compromise,
19 settlement, release, and discharge of, and in exchange for, each such Claim, its *pro rata* share of
20 86.811% of the Reorganized EB Holdings Stock, which Reorganized EB Holdings Stock shall,
21 automatically and without any action by the Holders of Allowed PIK Loan Claims, immediately
22 be contributed to EBT NewCo LLC (“NewCo”) in exchange for such Holder’s *pro rata* share of
23 the Class B Units of NewCo; (ii) Allowed General Unsecured Claims will be paid in full within
24 one year of the Effective Date; (iii) each Holder of an EBT Minority Shareholder Claim shall
25 receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in
26 exchange for, each such Claim, as well as their contribution, transfer, assignment and delivery of

27 _____
28 ¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

1 all of their right, title, and interest in the EBT Ordinary Shares to the Debtor, its *pro rata* share of
2 12.804% of the Reorganized EB Holdings Stock, which Reorganized EB Holdings Stock shall,
3 automatically and without any action by the Holders of EBT Minority Shareholder Claims,
4 immediately be contributed to NewCo in exchange for such Holder's *pro rata* share of the Class
5 C Units of NewCo; and (iv) on the Effective Date: (a) all Existing EB Holdings Interests shall be
6 cancelled, and (b) the Holder of the Existing EB Holdings Interests shall receive, in full and final
7 satisfaction, compromise, settlement, release, and discharge of, and in exchange for, such
8 Interests, 0.075% of the Reorganized EB Holdings Stock. Under the Plan, Other Priority Claims
9 (if any), Other Secured Claims (if any), and Intercompany Claims are Unimpaired.

10 5. Copies of the Plan and the Disclosure Statement may be obtained free of charge
11 by request submitted through the website maintained by the Debtor's voting agent, Prime
12 Clerk LLC, at <https://cases.primeclerk.com/ebholdings> (the "Case Website") or by
13 contacting the undersigned proposed counsel to the Debtor.

14 **I. Hearing to Consider Compliance with Disclosure Requirements and**
15 **Confirmation of the Pre-Packaged Plan.**

16 6. Upon the commencement of the Chapter 11 Case, it is anticipated that a
17 combined hearing to consider compliance with the Bankruptcy Code's disclosure
18 requirements, confirmation of the Plan, and any objections to the foregoing, and any other
19 matter that may properly come before the Bankruptcy Court, will be held before the
20 Bankruptcy Court, 300 Las Vegas Blvd. South, Las Vegas, Nevada 89101, on **October 21,**
21 **2019, at 9:30 a.m.** (the "Combined Hearing"). The Combined Hearing may be adjourned
22 from time to time without further notice other than an announcement in open court or in the
23 filing of a notice or a hearing agenda in the Chapter 11 Case. Notice of such adjourned date(s)
24 will be available on the Case Website.

25 7. Any responses or objections to the adequacy of the Disclosure Statement and/or
26 confirmation of the Plan (each, a "Plan/DS Objection") must: (i) be in writing; (ii) conform
27 to the applicable Bankruptcy Rules and Local Rules; (iii) set forth the name of the objector,
28 the nature and amount of Claims or Interests held or asserted by the objector against the

1 Debtor’s estate, and the basis for the objection and the specific grounds therefor; and (iv) be
 2 filed with the Bankruptcy Court, together with proof of service, **no later than October 7,**
 3 **2019.** In addition to being filed with the Bankruptcy Court, any Plan/DS Objections must be
 4 served on the following parties (collectively, the “Notice Parties”) so as to be received by
 5 such deadline:

Name:	Contact Information:
Debtor’s counsel	Garman Turner Gordon LLP 650 White Drive, Suite 100 Las Vegas, NV 89119 Fax: (725) 777-3112 Attn: Gregory E. Garman, Esq., Talitha Gray Kozlowski, Esq., and Teresa Pilatowicz, Esq. Email: ggarman@gtg.legal, tgray@gtg.legal, tpilatowicz@gtg.legal
Ad Hoc Committee	Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, New York 10019 Attn: Paul M. Basta, Esq., Kelley A. Cornish, Esq., and Kenneth M. Schneider, Esq. Email: pbasta@paulweiss.com, kcornish@paulweiss.com, kschneider@paulweiss.com

16 **UNLESS A PLAN/DS OBJECTION IS TIMELY FILED IN ACCORDANCE WITH THIS**
 17 **NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

18 **II. Summary of the Plan.²**

19 8. The following table summarizes: (i) the treatment of Claims and Interests under
 20 the Plan; (ii) the status and voting rights of each Class; and (iii) the treatment of Holders of Claims
 21 or Interests in each Class. The table is qualified in its entirety by reference to the full text of the
 22 Plan.

26 ² The statements contained herein are summaries of certain provisions contained in the Disclosure Statement and
 27 the Plan and do not purport to be precise or complete statements of all the terms and provisions of the Plan or
 28 documents referred to therein. For a more detailed description of the Plan, please refer to the Plan and the Disclosure
 Statement. Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the
 Plan.

Class	Claim	Treatment	Entitled to Vote
1	Other Priority Claims	Payment in full in Cash or such other treatment sufficient to render such Holder's Allowed Other Priority Claim Unimpaired.	No (Presumed to Accept)
2	Secured Claims	Payment in full in Cash, Reinstatement of the Allowed Secured Claim, or such other treatment sufficient to render such Holder's Allowed Secured Claim Unimpaired.	No (Presumed to Accept)
3	PIK Loan Claims	The Holder's <i>pro rata</i> share of 86.811% of the Reorganized EB Holdings Stock, which Reorganized EB Holdings Stock shall, automatically and without any action by the Holders of Allowed PIK Loan Claims, immediately be contributed to NewCo in exchange for such Holder's <i>pro rata</i> share of the Class B Units.	Yes
4	General Unsecured Claims	The Holder's: (i) <i>pro rata</i> portion of \$10,000 on the first Business Day 180 days after the Effective Date; and (ii) the payment in full in Cash of the outstanding balance of such Claim on the earlier of: (a) the closing of the Post-Restructuring Liquidity Event, and (b) the first Business Day that is 1 year after the Effective Date.	Yes
5	EBT Minority Shareholder Claims	The Holder's <i>pro rata</i> share of 12.804% of the Reorganized EB Holdings Stock, which Reorganized EB Holdings Stock shall, automatically and without any action by the Holders of EBT Minority Shareholder Claims, immediately be contributed to NewCo in exchange for such Holder's <i>pro rata</i> share of the Class C Units.	Yes
6	Intercompany Claims	All Intercompany Claims shall be paid, adjusted, continued, settled, Reinstated, discharged or eliminated, in each case to the extent determined to be appropriate by the Debtor or the Reorganized Debtor, as applicable, with the consent of the Required Consenting PIK Lenders and the QXH Parties.	No (Presumed to Accept)
7	Existing EB Holdings Interests	On the Effective Date: (i) all Existing EB Holdings Interests shall be cancelled, and (ii) the Holder of the Existing EB Holdings Interests shall receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, such Interests, 0.075% of the Reorganized EB Holdings Stock.	Yes

1 **III. Notice Regarding Certain Release, Exculpation, and Injunction Provisions in the**
2 **Plan.**

3 PLEASE BE ADVISED THAT ARTICLE VII OF THE PLAN CONTAINS CERTAIN
4 RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS, INCLUDING THOSE
5 SET FORTH BELOW. YOU ARE ADVISED AND ENCOURAGED TO CAREFULLY
6 REVIEW AND CONSIDER THE PLAN, INCLUDING THE RELEASE, EXCULPATION
7 AND INJUNCTION PROVISIONS SET FORTH IN ARTICLE VII OF THE PLAN, AS
8 YOUR RIGHTS MAY BE AFFECTED.

9 **A. Debtor’s Release.**

10 Pursuant to section 1123(b) of the Bankruptcy Code, to the fullest extent permitted
11 by applicable law and to the fullest extent provided under the Alternative Release and the
12 EBT Minority Release, for good and valuable consideration, including the contribution of
13 the Released Parties to facilitate the expeditious reorganization of the Debtor and the
14 implementation of the restructuring contemplated by the Plan, pursuant to the Confirmation
15 Order and on and after the Effective Date, the Released Parties³ and their respective
16 property are absolutely, unconditionally, and irrevocably deemed released, remised,
17 acquitted and forever discharged by the Debtor, the Reorganized Debtor, and the Estate
18 from any and all Causes of Action, including any derivative claims, asserted or assertable on
19 behalf of the Debtor, the Reorganized Debtor, the Estate, or any Affiliate of the foregoing,
20 whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or
21 hereinafter arising, in law, equity, contract, tort, or otherwise, by statute, violations of
22 federal or state securities law or otherwise that the Debtor, the Reorganized Debtor, the
23 Estate or any Affiliates of the foregoing would have been legally entitled to assert in their
24 own right (whether individually or collectively) or on behalf of the Holder of any Claim
against, or Interest in, the Debtor or any other Entity, based on or relating to, or in any
manner arising from or in connection with, in whole or in part, the Debtor, its Affiliates, the
Reorganized Debtor, the involuntary chapter 11 case commenced against the Debtor in the
Bankruptcy Court, the Chapter 11 Case, the Debtor’s in-or out-of-court restructuring
efforts, the Transaction Agreement, the Contribution Agreement, the Alternative Release,
the EBT Minority Release, the EBT Minority Contribution Agreement, any Definitive
Documents, intercompany transactions, the purchase, sale or rescission of the purchase or
sale of any security of the Debtor or the Reorganized Debtor, the subject matter of, or the
transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the
business or contractual arrangements between the Debtor and any Released Party, including
the PIK Loan Agreement, the restructuring of Claims and Interests prior to or in the
Chapter 11 Case, the negotiation, formulation, preparation, dissemination, or filing of the
Plan, the Plan Supplement, the Disclosure Statement, the Transaction Agreement, the

24 ³ “Released Parties” means each of the following in their capacity as such: (i) the Debtor; (ii) the Reorganized Debtor;
25 (iii) the Debtor’s and the Reorganized Debtor’s respective current and former boards of directors and each of the
26 members thereof; (iv) EBT; (v) EBT’s current and former board of directors and each of the members thereof; (vi)
27 EBT and Quexco Incorporated’s current and former advisory board and each of the members thereof; (vii) NewCo;
28 (viii) the Sponsor; (ix) the Sponsor Manager; (x) the Manager; (xi) the PIK Loan Agent; (xii) the Consenting PIK
Lenders; (xiii) the Ad Hoc Committee and each of its members; (xiv) the EBT Minority Parties, and (xv) with respect
to each of the foregoing Entities in clauses (i) through (xi), such Entities’ Affiliates and Representatives, expressly
including Howard Meyers, Rose-Marie Meyers, and The Rose-Marie Meyers 2006 Irrevocable Trust.

1 **Contribution Agreement, the GLAS Letter Agreement, the Alternative Release, the EBT**
 2 **Minority Release, the EBT Minority Contribution Agreement, any Definitive Documents,**
 3 **and any related agreements, instruments, term sheets or other documents contemplated by**
 4 **the foregoing or appropriate to effectuate the foregoing, the pursuit of Confirmation, the**
 5 **pursuit of Consummation, and any other act or omission, transaction, agreement, event, or**
 6 **other occurrence taking place on or before the Effective Date related or relating to any of**
 7 **the foregoing, except for any act or omission that constitutes fraud, gross negligence or**
 8 **willful misconduct as determined by a final order of a court of competent jurisdiction (all**
 9 **such claims and liabilities as described herein, collectively, the “Released Claims”).**

10 **Notwithstanding anything to the contrary in the foregoing, the Released Claims do**
 11 **not include and do not release the (i) the Excluded Claims,^[4] (ii) any indemnification**
 12 **obligations specifically assumed pursuant to and in accordance with the Plan, (iii) any**
 13 **indemnification obligations owed by parties other than the Debtor or Reorganized Debtor**
 14 **under the GLAS Direction Letter or the GLAS Agreements, or (iv) any post-Effective Date**
 15 **obligations of any party or Entity under the Plan, any of the Restructuring Transactions or**
 16 **any document, instrument or agreement (including those set forth in the Plan Supplement,**
 17 **the Transaction Agreement, the Contribution Agreement or the EBT Minority Contribution**
 18 **Agreement) executed to implement the Plan.**

19 **B. Third-Party Release.**

20 **For good and valuable consideration, as of the Effective Date and to the fullest extent**
 21 **permitted by applicable law and to the fullest extent provided under the Alternative Release**
 22 **and the EBT Minority Release, as of the Effective Date, each of the Releasing Parties^[5]**
 23 **(regardless of whether a Releasing Party is a Released Party) shall be deemed to have**
 24 **conclusively, absolutely, unconditionally, irrevocably, and forever released and acquitted**
 25 **each of the Released Parties and their respective property from any and all Released Claims**
 26 **(such releases, collectively, the “Third-Party Releases”).**

27 **Notwithstanding anything to the contrary in the foregoing, the Third-Party Releases**
 28 **do not include and do not release (i) the Excluded Claims, (ii) any indemnification obligations**
 29 **specifically assumed pursuant to and in accordance with the Plan, (iii) any indemnification**
 30 **obligations owed by parties other than the Debtor or Reorganized Debtor under the GLAS**
 31 **Direction Letter or the GLAS Agreements, (iv) any post-Effective Date obligations of any**
 32 **party or Entity under the Plan, any of the Restructuring Transactions or any document,**
 33 **instrument or agreement (including those set forth in the Plan Supplement, the Transaction**
 34 **Agreement, the Contribution Agreement or the EBT Minority Contribution Agreement)**
 35 **executed to implement the Plan, or (v) any obligation of any Non-Debtor, or of any Affiliate**
 36 **of Sponsor, to any other Non-Debtor or other Affiliate of Sponsor or to any of its own**
 37 **Representatives or to any Representatives of any other Non-Debtor or of any other Affiliate**
 38 **of Sponsor, in each case under (a) any charter, bylaw, statute or common-law or equitable**

39 ⁴ **“Excluded Claims” means, collectively, the Alternative Release Excluded Claims and the EBT Minority Release**
 40 **Claims. The term “Alternative Release Excluded Claims” has the same meaning as the definition of “Excluded**
 41 **Claims” set forth in section 2 of the Mutual Release Agreement, which is Exhibit E-2 to the Transaction Agreement**
 42 **as amended by the First TA Amendment. These agreements are attached as Exhibits 4A and 4B to the Disclosure**
 43 **Statement. The term “EBT Minority Release Excluded Claims” has the same meaning as the definition of “Excluded**
 44 **Claims” set forth in section 1.C of the Mutual Release Agreement, which is Exhibit E to the EBT Minority**
 45 **Contribution Agreement. The EBT Minority Contribution Agreement is attached as Exhibit 6 to the Disclosure**
 46 **Statement.**

47 ⁵ **“Releasing Parties” means each of the following in their capacity as such: (i) any Released Party; (ii) all Holders of**
 48 **Claims or Interests who submit a Ballot voting to accept the Plan; and (iii) with respect to the foregoing clauses (i)**
 49 **and (ii), such Entities’ Representatives.**

1 doctrine providing a right of contribution, advancement of expense or indemnification, or
2 (b) any intercompany arrangement, document, instrument or agreement, including any
3 entered into in connection with, or disclosed in or pursuant to, the Transaction Agreement
4 or the Contribution Agreement.

5 **C. PIK Loan Satisfaction and Release.**

6 On the Effective Date, pursuant to section 5.02 of the Annex to the PIK Loan
7 Agreement and the affirmative vote of the Holders of the PIK Loan Claims in Class 3 to
8 accept the Plan, any and all Claims and Causes of Action, including any derivative claims,
9 asserted or assertable, whether known or unknown, foreseen or unforeseen, matured or
10 unmatured, existing or hereinafter arising, in law, equity, contract, tort, or otherwise, by
11 statute, violations of federal or state securities law or otherwise, that any Holder of a PIK
12 Loan Claim would have been legally entitled to assert in their own right (whether
13 individually or collectively), including, without limitation, against any Released Party, based
14 on or relating to, or in any manner arising from or in connection with, in whole or in part,
15 the PIK Loan Agreement are waived and released and all obligations under the PIK Loan
16 Agreement, including, without limitation, all PIK Loan Claims and all monetary or non-
17 monetary obligations shall be fully and finally satisfied and waived and the PIK Loan
18 Agreement and all obligations thereunder or related thereto are cancelled.

19 **D. Exculpation.**

20 Except as otherwise specifically provided in the Plan, no Released Party shall have or
21 incur, and each Released Party is hereby released and exculpated from, any
22 Exculpated Claim; provided, however, that the foregoing “Exculpation” shall have no effect
23 on the liability of any Entity that results from any such act or omission that is determined by
24 a Final Order to have constituted fraud, gross negligence or willful misconduct.

25 **E. Injunction.**

26 Except as otherwise expressly provided in the Plan or for obligations issued or
27 required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have
28 held, hold or may hold Claims or Interests that have been released, discharged or are subject
to exculpation pursuant to Article VII of the Plan, are permanently enjoined, from and after
the Effective Date, from taking any of the following actions against, as applicable, the Debtor,
the Reorganized Debtor, and/or the Released Parties:

1. commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests;
2. enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against such Entities on account of or in connection with or with respect to any such Claims or Interests;
3. creating, perfecting or enforcing any lien or encumbrance of any kind against such Entities or the property or the Estate of such Entities on account of or in connection with or with respect to any such Claims or Interests;
4. asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Holder has filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication

1 of a Claim or Interest or otherwise that such Holder asserts, has, or intends to
2 preserve any right of setoff pursuant to applicable law or otherwise; and

- 3 5. commencing or continuing in any manner any action or other proceeding of
4 any kind on account of or in connection with or with respect to any such
Claims or Interests released or settled pursuant to the Plan, the Plan
Supplement, or the Definitive Documents.

5 Notwithstanding anything to the contrary in the foregoing, the injunction does not
6 enjoin any party under the Plan or under any document, instrument or agreement (including
those attached to the Disclosure Statement or included in the Plan Supplement) executed to
7 implement the Plan from bringing an action to enforce the terms of the Plan or such
document, instrument or agreement (including those attached to the Disclosure Statement
8 or included in the Plan Supplement) executed to implement the Plan.

9 **IV. Notice to Counterparties to Executory Contracts and Unexpired Leases.**

10 **A. Assumption of Executory Contracts and Unexpired Leases.**

11 On the Effective Date, the Transaction Agreement, the Alternative Release, the
12 Contribution Agreement, the EBT Minority Contribution Agreement and the EBT Minority
Release shall be assumed by the Debtor.

13 Additionally, as of and subject to the occurrence of the Effective Date and the payment of
14 any applicable Cure Claims, all Executory Contracts and Unexpired Leases to which the Debtor
is a party and which have not expired by their own terms on or prior to the Confirmation Date,
15 shall be deemed assumed, except for (i) the PIK Loan Agreement, which if determined to be an
Executory Contract, is expressly rejected; and (ii) any Executory Contract or Unexpired Lease
16 that (1) is identified on the Schedule of Rejected Executory Contracts and Unexpired Leases; (2)
have been previously rejected by a Final Order; (3) are the subject of a motion to reject Executory
17 Contracts or Unexpired Leases that is pending on the Confirmation Date; or (4) are subject to a
motion to reject an Executory Contract or Unexpired Lease pursuant to which the requested
18 effective date of such rejection is after the Effective Date.

19 Subject to the occurrence of the Effective Date, entry of the Confirmation Order by the
20 Bankruptcy Court shall constitute approval of the assumptions provided for in the Plan or the
Schedule of Rejected Executory Contracts and Unexpired Leases, pursuant to sections 365(a) and
21 1123 of the Bankruptcy Code. Unless otherwise indicated, assumptions of Executory Contracts
and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Each Executory
22 Contract or Unexpired Lease assumed pursuant to the Plan or by Bankruptcy Court order, but not
assigned to a third party before the Effective Date, shall re-vest in and be fully enforceable by the
23 Reorganized Debtor in accordance with its terms, except as such terms may have been modified
by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for
24 its assumption under applicable federal law.

25 To the maximum extent permitted by law, to the extent any provision in any
26 Executory Contract or Unexpired Lease assumed pursuant to the Plan restricts or prevents, or
purports to restrict or prevent, or is breached or deemed breached by, the assumption of such
27 Executory Contract or Unexpired Lease (including any “change of control” provision), then such
provision shall be deemed modified such that the transactions contemplated by the Plan shall not
28

1 entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or
2 to exercise any other default-related rights with respect thereto.

3 **B. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.**

4 The Reorganized Debtor shall pay Cure Claims, if any, on the Effective Date or as soon
5 as reasonably practicable thereafter. Unless otherwise agreed upon in writing by the parties to the
6 applicable Executory Contract or Unexpired Lease, all requests for payment of Cure Claims that
7 differ from the amounts paid or proposed to be paid by the Reorganized Debtor to a counterparty
8 must be filed with the Reorganized Debtor and the Notice and Claims Agent on or before thirty
9 (30) days after the Effective Date. Any such request that is not timely filed shall be disallowed
10 and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against
11 the Reorganized Debtor, without the need for any objection by the Reorganized Debtor or any
12 other party in interest or any further notice to or action, order, or approval of the Bankruptcy
13 Court. Any Cure Claim shall be deemed fully satisfied, released, and discharged upon payment
14 by the Reorganized Debtor of the Cure Claim; provided, however, that nothing herein shall
15 prevent the Reorganized Debtor from paying any Cure Claim despite the failure of the relevant
16 counterparty to file such request for payment of such Cure Claim. The Reorganized Debtor also
17 may, with the consent of the Required Consenting PIK Lenders and the QXH Parties, settle any
18 Cure Claim without any further notice to or action, order, or approval of the Bankruptcy Court.
19 In addition, any objection to the assumption of an Executory Contract or Unexpired Lease under
20 the Plan must be filed with the Bankruptcy Court before the Confirmation Hearing. Any such
21 objection will be scheduled to be heard by the Bankruptcy Court at the Confirmation Hearing or,
22 if otherwise determined by the Court, as soon thereafter as practicable. Any counterparty to an
23 Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of
24 any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

16 If there is any dispute regarding any Cure Claim, the ability of the Reorganized Debtor or
17 any assignee to provide “adequate assurance of future performance” within the meaning of section
18 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then payment of any
19 Cure Claim shall occur as soon as reasonably practicable after entry of a Final Order resolving
20 such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed
21 upon by the Debtor or the Reorganized Debtor, as applicable, and the counterparty to the
22 Executory Contract or Unexpired Lease. The Debtor and Reorganized Debtor, as applicable,
23 reserve the right at any time to move to reject any Executory Contract or Unexpired Lease based
24 upon the existence or outcome of any such dispute.

22 Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or
23 otherwise and full payment of any applicable Cure Claim pursuant to this Article V.B shall result
24 in the full release and satisfaction of any Cure Claims, Claims, or defaults, whether monetary or
25 nonmonetary, including defaults of provisions restricting the change in control or ownership
26 interest composition or other bankruptcy-related defaults, arising under any assumed Executory
27 Contract or Unexpired Lease at any time prior to the effective date of assumption.

26 **C. Indemnification Obligations.**

27 The obligation of the Debtor to advance expenses for or indemnify any individual who is
28 serving or served as one of the Debtor’s directors, officers or employees on or after the Petition

1 Date will be deemed and treated as Executory Contracts that are assumed by the Reorganized
2 Debtor pursuant to the Plan as of the Effective Date on the terms provided in the applicable
3 certificates of incorporation, bylaws or similar constituent documents, by statutory law or by
4 written agreement, policies or procedures of or with the Debtor, including, without limitation, the
5 EBT Minority Contribution Agreement. Accordingly, such indemnification and advancement of
6 expenses obligations will survive and be unaffected by entry of the Confirmation Order,
7 irrespective of whether such indemnification or advancement of expenses is owed for an act or
8 event occurring before or after the Petition Date; provided, however, that the Reorganized Debtor
9 shall not amend or restate any New Organizational Documents before or after the Effective Date
10 to terminate or adversely affect any such indemnification or advancement of expenses obligations;
11 provided, further, that notwithstanding anything to the contrary herein, nothing herein shall affect
12 (i) the release of the Additional Released Claims set forth in section 4 of the EBT Minority Release
13 or (ii) the limitations on the Debtor's indemnification and advancement of expenses obligations
14 set forth in section 14.2 of the EBT Minority Contribution Agreement, which shall, in the case of
15 (i) and (ii), remain in full force and effect.

16
17 **D. Director and Officer Liability Insurance.**

18 The Debtor's D&O Liability Insurance Policies shall be Reinstated under the Plan to the
19 fullest extent possible under applicable law. Notwithstanding anything in the Plan to the contrary,
20 effective as of the Effective Date, the Reorganized Debtor shall be deemed to have assumed all
21 D&O Liability Insurance Policies with respect to the Debtor's directors, managers, officers and
22 employees serving on or prior to the Effective Date pursuant to section 365(a) of the Bankruptcy
23 Code. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the
24 Reorganized Debtor's assumption of each of the D&O Liability Insurance Policies.
25 Notwithstanding anything to the contrary contained in the Plan, Confirmation of the Plan shall
26 not discharge, impair or otherwise modify any indemnity obligations assumed by the foregoing
27 assumption of the D&O Liability Insurance Policies, and each such assumed indemnity obligation
28 will be deemed and treated as an Executory Contract that has been assumed by the Reorganized
Debtor under the Plan and no Proof of Claim, Administrative Claim or objection to Cure Claim
need be Filed with respect thereto.

19 **E. Insurance Policies.**

20 All insurance policies pursuant to which the Debtor has any obligations in effect as of the
21 date of the Confirmation Order shall be deemed and treated as executory contracts pursuant to the
22 Plan and shall be assumed by the Debtor and Reorganized Debtor and shall continue in full force
23 and effect thereafter in accordance with their respective terms. All other insurance policies shall
24 vest in the Reorganized Debtor.

25 **F. Modifications, Amendments, Supplements, Restatements or Other**
26 **Agreements.**

27 Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that
28 is assumed shall include all modifications, amendments, supplements, restatements or other
agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory
Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits,
rights, privileges, immunities, options, rights of first refusal and any other interests, unless any of

1 the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated
2 under the Plan.

3 Modifications, amendments, supplements and restatements to prepetition Executory
4 Contracts and Unexpired Leases that have been executed by the Debtor during the
5 Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or
6 Unexpired Lease or the validity, priority or amount of any Claims that may arise in connection
7 therewith.

8 **G. Reservation of Rights.**

9 Nothing contained in the Plan shall constitute a representation by the Debtor that any
10 contract or lease is in fact an Executory Contract or Unexpired Lease or that the
11 Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract
12 or lease is or was executory or unexpired at the time of assumption, the Debtor, or, after the
13 Effective Date, the Reorganized Debtor shall have thirty (30) calendar days following entry of a
14 Final Order resolving such dispute to alter its treatment of such contract or lease.

15 **H. Nonoccurrence of Effective Date.**

16 In the event that the Effective Date does not occur, the Bankruptcy Court shall retain
17 jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired
18 Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

19 **I. Contracts Neither Assumed Nor Rejected.**

20 Unless otherwise provided in the Plan, any contract, whether executory or otherwise, that
21 is neither assumed nor rejected pursuant to sections 365 or 1129(b) of the Bankruptcy Code under
22 the Plan shall survive and remain unaffected by the discharge or otherwise by the Chapter 11
23 Case.

24 Dated this 27th day of August, 2019.

25 GARMAN TURNER GORDON LLP

26 /s/ Talitha Gray Kozlowski
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